



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 13, 1995

Mr. Jerome H. Supple
President
Office of the President
Southwest Texas State University
601 University Drive
San Marcos, Texas 78666-4615

OR95-597

Dear Mr. Supple:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 32666.

Southwest Texas State University (the "university") received a request for statistical information related to the distribution of grades in computer science classes. Although the university does not object to releasing most of the information, you contend that grade information relating to classes with four or fewer students is excepted from required public disclosure under sections 552.026 and 552.114 of the Government Code.

Under section 552.114(a), information is excepted "if it is information in a student record at an educational institution funded wholly or partly by state revenue." Section 552.026 incorporates another source of law, specifically, the federal Family Educational Rights and Privacy Act of 1974 ("FERPA"), into the Open Records Act, providing that the act

does not require the release of information contained in education records of an educational agency or institution, except in conformity with the Family Educational Rights and Privacy Act of 1974, Sec. 513, Pub. L. No. 93-380, 20 U.S.C. Sec. 1232g.

Gov't Code § 552.026; *see also* Open Records Decision No. 431 (1985). FERPA provides the following:

No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of educational records (or personally identifiable information contained therein other than directory information, as defined in paragraph (5) of subsection (a) . . .) of students without the written consent of their parents to any individual, agency, or organization.

20 U.S.C. § 1232g(b)(1). "Education records" are records which:

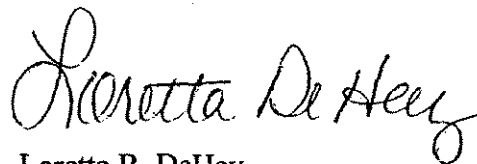
- (i) contain information directly related to a student; and
- (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.

Id. § 1232g(a)(4)(A). Sections 552.114(a) and 552.026 may not be used to withhold entire documents; the school district must delete information only to the extent "reasonable and necessary to avoid personally identifying a particular student" or "one or both parents of such a student." Open Records Decision No. 332 (1982) at 3. Thus, only information identifying or tending to identify students or their parents must be withheld from required public disclosure.

The university contends that releasing grade information for classes with four or fewer students would make the students' identities easily traceable. We agree. The university must withhold the grade distribution information relating to classes with four or fewer students. However, we note that the requestor, while acknowledging the possibility that this information could be withheld, specifically seeks the total number of students for these classes. We do not believe the release of such information would make the students' identities easily traceable. The university must release the number of students enrolled in these classes.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Government Section

LRD/LBC/rho

Ref: ID# 32666

Enclosure: Submitted document

cc: Dr. Grady Early
Professor, Computer Science Department
Southwest Texas State University
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(w/o enclosure)